

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SHAREBUILDER SECURITIES  
CORPORATION, a Washington  
corporation,

CASE NO. C09-0358 RSM  
ORDER

Plaintiff,

V.

THE CHILDREN'S INTERNET, INC., a  
Nevada Corporation, et al.,

## Defendants.

## I. INTRODUCTION

This matter comes before the Court on “The Children’s Internet Inc.’s Motion to Dismiss Re: Voluntary Withdrawal of Claim for Interpleader,” (Dkt. #29) and Plaintiff’s “Cross-Motion for Judgment Including an Award of Attorney’s Fees and Costs” (Dkt. #31). This interpleader action concerns conflicting claims over 1.4 million shares of The Children’s Internet, Inc. (“TCI”) that were held in the personal account of defendant Jamshid Ghosseiri at ShareBuilder Securities Corporation (“ShareBuilder”), an online broker-dealer of securities.

1 TCI moves to dismiss its claims to the contested shares under Federal Rule of Procedure  
2 41(c). ShareBuilder does not oppose the dismissal, but argues that the TCI should be held  
3 liable for attorney's fees and costs, and requests that defendants be permanently enjoined  
4 from prosecuting claims against ShareBuilder relating to the contested shares.

5 Having reviewed TCI's motion, ShareBuilder's motion, and the remainder of the  
6 record, and for the reasons set forth below, the Court hereby GRANTS TCI's Motion to  
7 Dismiss and GRANTS ShareBuilder's Motion for Judgment and Attorneys Fees, with  
8 attorneys fees to be awarded from the interpleaded fund.

## 9 II. DISCUSSION

### 10 A. Background

11 In 2006, the Securities and Exchange Commission ("SEC") filed an action against TCI,  
12 Nasser Hamedani and Sholeh Hamedani (TCI's founders) and two other defendants for  
13 violating multiple provisions of the federal securities laws in connection with the unlawful  
14 sale and issuance of TCI securities. (Dkt. #36, Ex. A & Ex. B). TCI and the Hamedanis did  
15 not contest liability and, on October 3, 2008, the California District Court ordered the  
16 Hamedanis to disgorge their profits from the illegal sale of TCI shares. (Dkt. #36, Ex. A).  
17 The California District Court declined to disgorge funds from TCI itself because "ordering  
18 disgorgement against TCI would not benefit the corporation's shareholders, who are the  
19 victims of the Hamedanis unlawful conduct." *Id.* at 20.

20 In early 2009, TCI obtained a temporary restraining order in the Second Judicial District  
21 Court of the State of Nevada restraining multiple individuals, including the Hamedanis and  
22 their business associates, from transferring, selling, or otherwise disposing of TCI shares.  
23 (Dkt. #1, Ex. A). The Nevada state court issued the TRO because it appeared to the court that  
24 TCI shares held by the restrained individuals might have been issued to them illegally. (Dkt.

1 #1, Ex. A). Subsequent to obtaining the TRO, TCI learned that defendant Ghosseiri held 1.4  
2 million shares of TCI stock in his ShareBuilder account. Ghosseiri is not one of the  
3 individuals restrained by the Nevada TRO. However, TCI claimed that Ghosseiri was related  
4 to three individuals (Dkt. #32, p. 6) who were restrained from trading in TCI shares pursuant  
5 to the Nevada TRO (Dkt. #1, p. 6). It also appeared that Ghosseiri had obtained his shares  
6 directly from one of the individuals who had been restrained by the Nevada TRO. *Id.*

7 TCI asked ShareBuilder to deliver the 1.4 million TCI shares in Mr. Ghosseiri's account  
8 to TCI's transfer agent. (Dkt #32, p. 2). ShareBuilder filed this interpleader action against  
9 TCI, Ghosseiri, and the individual defendants involved in the Nevada TRO to settle rights  
10 regarding the 1.4 million shares. (Dkt. #1). Mr. Ghosseiri, TCI, and each of the defendants  
11 listed on the Nevada TRO were listed in ShareBuilder's complaint. (Dkt. #1). Only Mr.  
12 Ghosseiri and TCI filed answers to the complaint. On September 24, 2009, this Court granted  
13 ShareBuilder's Motion for Partial Summary Judgment dismissing all defendants from the  
14 lawsuit except for TCI and Mr. Ghosseiri.

15 TCI now asserts that the Justice Department has obtained an indictment against the  
16 Hamedanis and that "shares of TCI have become virtually worthless." (Dkt. #35, p. 2). As a  
17 result, TCI seeks to dismiss this action under Federal Rule of Civil Procedure 41(c). (Dkt.  
18 #29, p. 1). ShareBuilder asserts that the action must be dismissed under Federal Rule of Civil  
19 Procedure 41(a)(2) because it asserted a claim for attorney's fees in its complaint. (Dkt. #31).  
20 ShareBuilder does not object to a dismissal, *per se*, provided that TCI's claims are dismissed  
21 with prejudice, ShareBuilder is permanently discharged of all liability related to the disputed  
22 TCI shares, and it is awarded \$8,174 in fees and \$979.22 in costs for having to file the present  
23 interpleader action. *Id.* at 1-2. Mr. Ghosseiri failed to respond to TCI's Motion to Dismiss.  
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1     **B. Defendant TCI's Motion to Dismiss**

2         The Court considers TCI's Motion to Dismiss under Fed. R. Civ. Proc. 41(c), which  
 3 pertains to the dismissal of counterclaims, cross-claims and third-party claims. The Court  
 4 disagrees with plaintiffs that TCI can only move to dismiss under Fed. R. Civ. Proc. 41(a)(2).  
 5 TCI's claims for relief are considered cross-claims under Fed. R. Civ. Proc. 22. *See Grubbs v.*  
 6 *General Elec. Credit Corp.*, 405 U.S. 699, 705 n. 2 (1972). Under Fed. R. Civ. Proc. 41(c), a  
 7 party can voluntarily dismiss a cross-claim without a court order if a notice of dismissal is made  
 8 "(1) before a responsive pleading is served; or (2) if there is no responsive pleading, before  
 9 evidence is introduced at a hearing or trial." Since no responsive pleading has been served and  
 10 no hearing or trial has taken place, the conditions precedent to dismissal under Rule 41(c) have  
 11 been met. The Court notes that TCI has requested that its claims be dismissed with prejudice.  
 12 (Dkt. # 29, p. 3). This Court thereby GRANTS TCI's Motion to Dismiss under Fed. R. Civ.  
 13 Proc. 41(c) and defendant TCI's claims are dismissed with prejudice.

14     **C. Plaintiff ShareBuilder's Request for Injunction**

15         Plaintiff requests that the Court restrain and enjoin each of the defendants from instituting  
 16 or prosecuting any other action or proceeding against ShareBuilder related to the 1.4 million  
 17 shares of TCI at issue in this lawsuit. (Dkt. #31, p. 2). Since this case was filed as a statutory-  
 18 interpleader action under 28 USC § 1335, this Court is authorized to issue a permanent  
 19 injunction restraining claimants from instituting or prosecuting any proceeding in any State of  
 20 United States Court relating to the contested property. *See* 28 USC § 2361. In addition, under  
 21 Local Rule CR 7(b), failure to respond to a motion may be considered by the court as an  
 22 admission that the motion has merit.

23         TCI has not opposed ShareBuilder's request for injunction and specifically disclaims any  
 24 interest in the shares of TCI stock. (Dkt. #35, p. 2). Moreover, TCI has requested that the

1 instant interpleader action be dismissed with prejudice. (Dkt. #29, p. 3). Defendant Ghosseiri  
 2 has also failed to respond to ShareBuilder's motion for an injunction. Therefore, pursuant to its  
 3 authority under 28 USC § 23661 and Local Rule CR 7(b), this Court GRANTS defendant's  
 4 motion for permanent injunction, enjoining defendants TCI and Ghosseiri from instituting or  
 5 prosecuting any proceeding in any court related to the contested TCI shares.

6 **D. ShareBuilder's Cross-Motion for Judgment Including an Award of Attorney's Fees and  
 7 Costs.**

8 ShareBuilder asserts a claim for \$8,174 in attorney's fees and \$979.22 in costs. It is the  
 9 practice of the Ninth Circuit to exercise its authority under 28 USC § 2361 to "make all  
 10 appropriate orders to enforce its judgment," to award attorney's fees and costs to interpleader  
 11 plaintiffs where the plaintiff has no interest in the fund. *See Schirmer Stevedoring Co., Ltd. v. et*  
 12 *al.*, 306 F.2d 188, 193-94 (9<sup>th</sup> Cir. 1962). *See also* 4 *Moore's Federal Practice* (3<sup>rd</sup> ed.) § 22.06,  
 13 at 22-96. The rationale for granting fees and costs in such cases are (1) that the plaintiff has  
 14 benefited the claimants by preventing dissipation of the fund by providing early litigation over  
 15 competing claims and (2) that the interpleader plaintiff should not have to pay attorneys fees to  
 16 guard against multiple claims over funds that it agrees belongs to someone else. *Schirmer*, 306  
 17 F.2d at 193-4. TCI concedes that this precedent exists and does not contest the award of  
 18 attorney's fees and costs, other than by stating that such an award is "discretionary with the  
 19 Court." (Dkt. #35, p. 3). The Court is satisfied that ShareBuilder has no interest in the  
 20 contested shares of TCI stock. (Dkt. #31, p. 4).

21 TCI requests that, if an award of attorney's fees and costs is made, that the award be  
 22 taken from the interpleaded fund. ShareBuilder requests that TCI be made jointly and severally  
 23 liable with the *res* for the attorney's fees and expenses it seeks to recover. When costs and fees  
 24 are awarded to a plaintiff in an interpleader action, they are generally awarded from the

1 interpleaded fund. 4 Moore's Federal Practice (3<sup>rd</sup> ed.) § 22.06, at 22-96. *See, e.g., Trustees of*  
2 *Directors Guild of America-Producer Pension Benefits Plans v. Tise*, 234 F.3d 415, 426 (9th Cir.  
3 2000). Costs should not be assessed against a stakeholder unless the stakeholder has acted  
4 improperly or in bad faith. *See Gelfgren v. Republic Nat'l Life Ins. Co.*, 680 F.2d 79, 81 (9th Cir.  
5 Cal. 1982) ("Costs . . . should not be assessed against a stakeholder, at least where the  
6 stakeholder has not been dilatory or otherwise guilty of bad faith."); *Murphy v. Travelers*  
7 *Insurance Co.*, 534 F.2d 1155, 1164 (5th Cir. 1976) ("[S]uch an award should be limited to those  
8 cases where the trial judge concludes, by way of specific factual findings, that the stakeholder's  
9 conduct with respect to the interpleader action was improvident, vexatious, or otherwise  
10 improper, if not in bad faith.").

11 ShareBuilder submits that "the equities of the situation, including specifically TCI['s]  
12 unexplained withdrawal of its claim," support an award of fees and costs that makes TCI jointly  
13 and severally liable for the fees and costs. TCI has since explained in its Opposition to  
14 ShareBuilder's Motion for Judgment that its withdrawal was due to the recent indictment against  
15 the Hamedanis in connection with the TCI shares. (Dkt. # 35 p. 2). This Court does not consider  
16 TCI's initial failure to explain its reasons for dismissing the case as tantamount to impropriety or  
17 bad faith. Therefore, there is no justification for awarding attorney's fees against TCI in this  
18 case, as opposed to awarding the fees from the interpleaded shares of stock. The Court has  
19 examined the fees and costs assessed by plaintiff's attorney (Dkt #33) and finds them to be  
20 reasonable. Therefore, the Court GRANTS plaintiff's request for attorneys fees and costs to be  
21 awarded from the interpleaded fund.

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### III. CONCLUSION

Having reviewed the relevant pleadings, the declarations and exhibits attached thereto, and the remainder of the record, the Court hereby finds and ORDERS:

(1) Defendant TCI's Motion to Dismiss re: Voluntary Withdrawal of Claim for Interpleader (Dkt. #29) is GRANTED. Defendant TCI is hereby dismissed from this action with prejudice.

(2) Plaintiff ShareBuilder's Cross-Motion for Judgment Including an Award of Attorney's Fees and Costs (Dkt. #31) is GRANTED. Plaintiff ShareBuilder is hereby fully discharged from this action with prejudice. Plaintiff has no liability to either remaining defendant in connection with the subject matter of this action. Plaintiff is entitled to retain \$8,174 in fees and \$979.22 in costs from the interpleaded fund.

(3) This action is DISMISSED. Plaintiff is ordered to release the remainder of the interpleader funds, minus fees and costs, to the sole remaining party to this action, Mr. Ghosseiri. The Clerk is directed to close this case.

(4) The Clerk is directed to forward a copy of this Order to all counsel of record.

Dated September 29, 2010.

  
RICARDO S. MARTINEZ  
UNITED STATES DISTRICT JUDGE